IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.113 OF 2005

IN

SUMMARY SUIT NO.3564 OF 2004

Rashid Irani. ...Plaintiff

vs.

Ashok Sharma & Associates & Another. ...Defendants.

Mr.Ruchi Tolat i/b. M/s.L.C.Tolat & Co., for Plaintiff.

Mr.Amit Jamshindikar, i/b. M/s.D.H.Law Associates, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 5th June, 2006.

P.C.:-

1. The plaintiff has field the suit for recovery of certain amount with interest from defendants. The suit is based on memorandum of understanding the copy of which is at "Exhibit A" to the plaint, between plaintiff and defendants. According to the memorandum of understanding, sixteen sites were given by the plaintiff to the defendants for exploiting and according to that contract, 70% of the amount earned by the defendants from exploiting

those sites was to be paid to the plaintiff and 30% of the amount was to be retained by the defendants. There is no material produced on record to show how much amount was earned by the defendants by exploiting the sites. One does not find what is the basis on which the bills which are at Exhibit B-1 to B-9 were raised by the plaintiff on the defendants. In short, to make out a case which is pleaded in the plaint, the plaintiff will have to produce before the Court not only the documentary evidence but also the oral evidence. The nature of the claim made by the plaintiff is not such as can be said to be based entirely on the documents which are produced on record. The defendants are denying the demand made against them by the plaintiff. According to the defendants, they have not received the amount from the clients. I do not find any obligation in the memorandum of understanding on the defendants to make payment to the plaintiff even though the defendants do not receive amount from the clients whose hoardings are displayed. No document has been produced to show that the amounts have been actually received by the defendants from the clients. In the circumstances therefore, in my opinion, considering the nature of the claim made by the plaintiff the suit cannot be decreed by following summary procedure. The summons for judgment is disposed of. The defendants are granted leave to defend the suit. The defendants to file Written Statement within a period of six weeks from today. Suit be transferred to

commercial cause list.